

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 22132 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

=====

RASIDMIYA @ JUMMA S/O ABBASMIYA SHAIKH
Versus
STATE OF GUJARAT & OTHERS

=====

Appearance :

MS BANNA DUTTA FOR MR AR SHAIKH for Petitioner.
MR LR POOJARI, AGP for Respondent No. 3,
RULE SERVED BY DS for Respondents : 1 - 2.

=====

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**Date : 07/12/2005****ORAL JUDGMENT**

1. Rasidmiya @ Jumma S/o. Abbasmiya Shaikh, petitioner, has filed this petition under Articles 226/227 of the Constitution of India, challenging the detention order

dated 8.6.2005 passed by the Commissioner of Police, Ahmedabad City – respondent No.2. By the impugned order the petitioner has been detained as a “dangerous person” under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 (“PASA” for short). Along with the detention order, the petitioner was also served with the grounds of detention. The petition was filed on 11th November, 2005.

2. The matter was placed for hearing before this Court on 14th November, 2005, and this Court has issued Rule returnable on 5th December, 2005. On basis of the Rule, Mr.L.R.Poojari, learned AGP appears on behalf of the State.

3. Ms.Banna Dutta, learned advocate for the petitioner has invited my attention to the order of detention dated 08.6.2005. He was also detained on the same day. She has also shown the grounds supplied by the authority.

4. The learned advocate for the petitioner has invited my attention to the grounds supplied by the authority filed by the Commissioner of Police, Ahmedabad City.

There are five incidents mentioned in this behalf. The first offence was registered at Maninagar Police Station being Criminal Case No.31 of 2005. The offence was committed on 20.1.2005 under Secs.379 and 114 of Indian Penal Code. It is alleged that he has damaged auto rickshaw which amounts to Rs.4,500/-. The second offence was registered at Kalupur Police Station being Criminal Case No.28 of 2005. The offence was committed on 8.2.2005 under Secs.379 and 114 of IPC. There it was alleged that he has damaged auto rickshaw which amounts to Rs.15,000/-. The third offence was registered at Kalupur Police Station being Criminal Case No.70 of 2005. The offence was committed on 1.5.2005 under Secs.379 and 114 of IPC. There it was alleged that he has damaged auto rickshaw which amounts to Rs.10,000/-. The fourth incident was registered at Kalupur Police Station being Criminal Case No.75 of 2005. The offence was committed on 10.5.2005 under Secs.379 and 114 of IPC. There it was alleged that he has damaged auto rickshaw which amounts to Rs.12,000/-. The fifth offence was registered at Gomitpur Police Station being Criminal Case No.82 of 2005. There it was alleged that he has damaged auto rickshaw which amounts to Rs.10,000/-.

5. The learned advocate for the petitioner has relied upon the judgment of the Hon'ble Apex Court in the case of Darpan Kumar Sharma @ Dharban Kumar Sharma Vs. State of Tamil Nadu and others reported in AIR 2003 SC 971. The learned advocate, therefore, submitted that, in view of the grounds stated in the detention order, the petitioner cannot be treated as dangerous person and that it cannot be said to be a breach of public order and she stated the said contention has been supported by the aforesaid judgment of the Apex Court.

6. Mr.L.R.Poojari, learned AGP has tried to support the order of the authority on the grounds stated therein. The authority has not filed affidavit-in-reply in this behalf. Mr.Poojari, learned AGP has also stated that the co-detenu of the same incident has also filed a petition before this Court being Special Civil Application No.16668 of 2005, and this Court by its judgment and order dated 12th September, 2005, has released the co-detenu in this behalf.

7. Having heard the learned advocates for the parties and perused the record. In my opinion, the detaining

authority has passed the detention order without any credible or cogent material about the detenu being a dangerous person. On consideration of the factual aspect emerging from the record of the petition and considering the rival submissions, the facts of this case is squarely covered by the judgment of the Apex Court in the case of Darpan Kumar (supra), and therefore, the order of detention cannot be sustained and deserves to be quashed and set aside. In view of the fact that the co-detenu is released by this Court by judgment and order dated 12.9.2005, this is an additional ground for which the petitioner is required to be released in this behalf.

8. For the foregoing reasons, the petition is allowed. The impugned order dated 08.6.2005 passed by the respondent No.2-authority is quashed and set aside. The detenu Rasidmiya @ Jumma, Son of Abbasmiya Shaikh is ordered to be set at liberty forthwith unless required in any other case. Rule is made absolute. D.S., permitted.

(K.M. Mehta, J.)

syed/